Cambridgeshire County Council

# BRIEFING NOTE FOR MEMBERS REGARDING THE NEW CODE OF CONDUCT AND DISCLOSURE OF INTERESTS.

## INTRODUCTION

The Localism Act introduced fundamental changes to the standards of conduct that local authority Members and co-opted members have to abide by. These changes impact on the Code of Conduct itself, the nature of interests and the way in which the whole system is regulated. It is very important that Members understand the new rules, as a breach of them can now constitute a criminal offence.

The new system came into effect on 1st July 2012 and Cambridgeshire County Council, like most other authorities, has adopted a new Code of Conduct in order to comply with its statutory obligations.

This briefing note sets out the principal changes to the Code of Conduct, the new rules on declaring interests and summarises the impact of the changes on Members. In addition to this explanatory note, briefing sessions will be held for Members.

## KEY CHANGES

The following key changes have now taken effect:

- The old Code of Conduct put in place by the now defunct Standards for England has been replaced by a new, locally determined Code.

- There is a new process in place for investigating complaints made against Councillors which is more flexible and less bureaucratic.

- The old regime requiring the registration and declaration of personal interests is no longer in place and the concepts of "personal" and "personal and prejudicial" interests have also been replaced.

- In their place are two new classes of interest known as:

  - "Disclosable Pecuniary Interests"; and
  - "Non-Statutory Disclosable Interests".

  Disclosable pecuniary interests include interests held by a member's spouse, civil partner or similar.

- Members must register disclosable pecuniary interests within 28 days of election or adoption of the new Code, whichever is the earlier.

- There are detailed rules about declaring disclosable pecuniary interests and non statutory interests at meetings and these are set out below.

- If a member has a disclosable pecuniary interest in a matter under consideration at a meeting, they must not participate in the discussion or vote.

- Failure to comply with the rules relating to disclosable pecuniary interests is a criminal offence and may be punishable by a fine of up to £5,000 and/or disqualification for up to 5 years.

- If a Member has a non-statutory disclosable interest in a matter, they must declare it at the meeting unless it is in the Register of Interests. They may still participate in the meeting unless the interest is so significant that a member of the public would conclude that it would adversely affect their judgement of the public interest.

**THE NEW CODE OF CONDUCT**

Each local authority must adopt the Code, but has the freedom to determine the form of its own code of conduct, provided that it complies with certain principles set out in the Localism Act, namely:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.

**GENERAL PROVISIONS GOVERNING MEMBERS' CONDUCT**

In terms of the general provisions governing Members' conduct, the new Code of Conduct adopted by the Council is broadly comparable to the old code. The circumstances in which it applies, and the obligations that Members are under (for example relating to bullying, the handling of confidential information etc.) are largely unchanged. The principle changes are those relating to the way in which interests are dealt with. The Code contains two new categories of interest; disclosable pecuniary interests and non-statutory disclosable interest.

**WHAT IS A "DISCLOSABLE PECUNIARY INTEREST"?**

A full definition is attached to this note at Appendix A.

Disclosable personal interests are very similar to the property and financial interests that had to be registered and declared under the old system, **but with one important difference**.

You now need to declare, not only your own interests, but also those of:

- Your spouse or civil partner;
- A person with whom you are living as husband and wife; and
- A person with whom you are living as if you are civil partners.

The need to declare only arises if you are aware that the other person has the interest. You are not under a legal obligation to ask them.

## WHAT ARE MY OBLIGATIONS TO REGISTER A "DISCLOSABLE PECUNIARY INTEREST"?

You need to notify the Council's Monitoring Officer of disclosable pecuniary interests you have within 28 days of your election or the adoption of the new Code, whichever is the sooner. If your interests change, you must let the Monitoring Officer know within 28 days in order that the Register may be kept up to date.

Additionally, if you are at a meeting that is considering something in which you have a disclosable pecuniary interest and that interest is not registered, you must declare the interest and inform the Monitoring Officer within 28 days of the meeting.

## WHAT ARE MY OBLIGATIONS TO DECLARE A "DISCLOSABLE PECUNIARY INTEREST"?

If your interest is registered, you do not have to declare it at meetings. If your interest is not registered, then you need to declare it.

## WHAT ARE THE CONSEQUENCES OF HAVING A "DISCLOSABLE PECUNIARY INTEREST" IN A MATTER?

You may not speak or vote when the matter is being considered. The fact of having a disclosable pecuniary interest will always be a bar to participation, unless you obtain a dispensation.

## DO I NEED TO LEAVE THE ROOM IF I HAVE A "DISCLOSABLE PECUNIARY INTEREST"?

Yes. The new Code of Conduct adopted by the Council requires Members to leave the meeting room if they have a disclosable pecuniary interest, although they may make representations, give evidence or answer questions prior to the commencement of the debate on that matter.

## WILL THE REGISTER OF "DISCLOSABLE PECUNIARY INTERESTS" BE PUBLISHED?

Yes, there is a legal obligation to make the register available for inspection and to publish it on the Council's website. You are not required to disclose the name of your spouse, civil partner etc. when listing their interests.

However, an interest may be exempted from publication if it is a "sensitive interest". An interest is "sensitive" if its disclosure could lead to the member, or to someone connected with them, being subject to violence or intimidation. Responsibility for deciding whether an interest is "sensitive" is given to the Monitoring Officer.

## I HAVE A DISCLOSABLE PECUNIARY INTEREST BUT WOULD LIKE A DISPENSATION TO SPEAK AND VOTE

It is possible to grant a dispensation to speak and/or vote in a wide range of circumstances. Dispensations may be granted where the Council:

- considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

- considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

- considers that granting the dispensation is in the interests of persons living in the authority's area,

- considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

- considers that it is otherwise appropriate to grant a dispensation.

The power to grant or refuse dispensations has been delegated by the Council to the Monitoring Officer and any application should be made to them.

**NON-STATUTORY DISCLOSABLE INTERESTS**

Whilst the statutory definition of a "disclosable pecuniary interest" covers a lot of ground, it is narrower in scope than interests declarable under the old Code of Conduct. For example a Councillor considering a planning application made by a son or daughter would not have a disclosable pecuniary interest under the new regime.

The Code of Conduct adopted by the Council includes an additional section which describes a category of interest called 'non-statutory disclosable interests'.

**WHAT ARE NON-STATUTORY DISCLOSABLE INTERESTS?**

These fall into two groups. Firstly, items of business that affect your wellbeing or the wellbeing of a family member or close associate to a greater extent than they would affect the wellbeing of the majority of Council Tax payers. Secondly, items of business that relate to the categories of interest listed in Appendix A but in respect of a family member or close associate.

**WHAT ARE THE CONSEQUENCES OF HAVING A NON- STATUTORY DISCLOSABLE INTEREST?**

If you have a non-statutory disclosable interest in a matter then you must verbally declare it at a meeting unless it is recorded in the Register of Interests. You may voluntarily register such interests. Doing so removes the obligation to declare them at the meeting.

**MUST I LEAVE THE MEETING?**

If the non-statutory disclosable interest is one which a member of the public would reasonable regard as so significant that it is likely to prejudice your judgement of the public interest, you must leave the meeting while that matter is being discussed. You may however make recommendations, give evidence, or answer questions prior to commencement of the debate on that matter.

**DEALING WITH COMPLAINTS UNDER THE NEW CODE**

The Council has appointed a new Constitution and Ethics Committee to oversee complaints made against Members under the new code. Unlike under the old regime, the Committee will **not** deal with complaints about an alleged failure to declare a disclosable pecuniary interest. Such allegations will be a matter for the police to investigate. The

Committee will set up Hearings Sub-Committees to consider all alleged breaches of the new Code and determine appropriate sanctions or actions where a breach is found. The Council will also appoint an Independent Person to oversee these investigations.

## WHAT WILL THE INDEPENDENT PERSON DO?

The Independent Person is appointed in order to oversee complaints made against Councillors. Their views must be sought and taken into account where the Council has:

- decided to investigate an alleged breach;
- before it makes a finding as to whether a member has failed to comply with the Code of Conduct; and
- before it decides on action to be taken in respect of a member.

They Independent Person may be consulted by the Authority in respect of a standards complaint at any other stage and may also be consulted by a member or co-opted member against whom a complaint has been made.

## BREACH AND SANCTIONS:

### Failure to Follow the General Obligations

The Council may apply a range of sanctions where a Councillor has been found to have breached the general obligations set out in the first part of the Code of Conduct. These include censure, the withdrawal of facilities and training. The Council no longer has the power to suspend Members.

### Failure to Register or Declare a Disclosable Pecuniary Interest

Failure to register or to declare a "disclosable pecuniary interest" is a criminal offence. So is speaking and voting, unless you have a dispensation. This is punishable by a fine of up to £5,000 and/or disqualification as a Councillor for up to five years.

## COMMENCEMENT

The new Code of Conduct was formally adopted by Council on 17th July 2012. The new arrangements affect all meetings following this date.

## HELP

If you require further advice or have any queries, please contact the Council's Monitoring Officer.

Quentin Baker
Director of Legal Services

[redacted]

**Appendix A**

## Disclosable Pecuniary Interests: Description and Definitions

| Disclosable Pecuniary Interest | Description |
|---|---|
| Employment, office, trade, profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain. |
| Sponsorship | Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.<br>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. |
| Contracts | Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:<br><br>(a) under which goods or services are to be provided or works are to be executed; and<br>(b) which has not been fully discharged. |
| Land | Any beneficial interest in land, which is within the area of the relevant authority. |
| Licences | Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer. |
| Corporate tenancies | Any tenancy where (to M's knowledge):<br><br>(a) the landlord is the relevant authority; and<br>(b) the tenant is a body in which the relevant person has a beneficial interest. |
| Securities | Any beneficial interest in securities of a body where:<br><br>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and<br>(b) either:<br>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or<br><br>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class. |

## Definitions

These descriptions on interests are subject to the following definitions:

"***The Act***" means the Localism Act 2011.

"**Body in which the relevant person has a beneficial interest**" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest.

"**Director**" includes a member of the committee of management of an industrial and provident society.

"**Land**" excludes an easement, servitude, interest or right in or over land, which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income.

"**M**" means a member of a relevant authority.

"**Member**" includes a co-opted member.

"**Relevant Authority**" means the authority of which M is a member.

"**Relevant Period**" means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act.

"**Relevant Person**" means M or any other person referred to in section 30(3) (b) of the Act.

"**Securities**" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## Offences

It is a criminal offence to:

- Fail to notify the Monitoring Officer of any Disclosable Pecuniary Interest within 28 days of election.
- Fail to disclose a Disclosable Pecuniary Interest at a meeting if it is not on the register.
- Fail to notify the Monitoring Officer within 28 days of a Disclosable Pecuniary Interest that is not on the register that you have disclosed to a meeting.
- Participate in any discussion or vote on a matter in which you have a Disclosable Pecuniary Interest (without a dispensation).

- Knowingly or recklessly provide information that is false or misleading in notifying the Monitoring Officer of a Disclosable Pecuniary Interest or in disclosing such interest to a meeting.

**The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a Councillor for up to 5 years.**